

## **SUMMARY OF PUBLIC BENEFIT/LANDLOCKED TIDELANDS REGULATIONS**

### **Background**

St. 2007, c. 168 (Chapter 168) was enacted in November of 2007. It authorizes a regulatory exemption for certain landlocked tidelands from M.G.L. c. 91 licensing requirements. The legislature enacted this statute following the issuance of *Moot v. Department of Environmental Protection*, in which the Supreme Judicial Court held invalid a Department of Environmental Protection (MassDEP) regulation exempting projects in ‘landlocked tidelands’ from licensing. According to MassDEP’s regulations, tidelands become ‘landlocked’ when they are filled and are separated by a public way from flowed tidelands. The court found that MassDEP lacked statutory authority to exempt such projects.

Chapter 168 provides the statutory authority that the court found absent in *Moot*. Chapter 168 expressly exempts uses and structures in ‘landlocked tidelands’ from M.G.L. c. 91 licensing requirements, and requires the Secretary of the Executive Office of Energy and Environmental Affairs (the Secretary) to issue a public benefit determination for certain projects in ‘waterfront’ and landlocked tidelands. The public benefit determination of the secretary is not intended to supersede MEPA or c. 91 review and will not delay MEPA review or the issuance of a c. 91 license. The statute also calls upon the Secretary to issue regulations to implement the public benefit review process.

### **Regulatory Development Process**

The Executive Office of Energy and Environmental Affairs established a Tidelands Advisory Committee to assist in the development of regulations implementing Chapter 168 and to provide insight and perspectives on the issues raised by the statute. The committee included members of state government, environmental organizations, developer representatives, water-dependent business representatives and community representatives. The committee met four times over the course of several months.

### **Summary of the Regulations**

301 CMR 13.00 is promulgated by the Secretary of Energy and Environmental Affairs pursuant to the authority granted under M.G.L. c. 91, §18B (“Section 18B”).

301 CMR13.00 establishes the procedures and standards to implement the “public benefit determination” requirement under Section 18B. The regulations include definitions, many of which track those found in c. 91, and refer to the applicability of the MEPA regulations.

301 CMR 13.02 describes the projects that are subject to mandatory public benefit review and discretionary public benefit review. The Secretary *must* conduct and complete the public benefit determination for any project that is required to file an environmental impact

report pursuant to the Massachusetts Environmental Policy Act (MEPA), M.G.L. c. 30 and is completely or in part located in tidelands or landlocked tidelands.

In addition, the Secretary *may* conduct and complete a public benefit review for any proposed project that is required to file an environmental notification form pursuant to MEPA, M.G.L. c. 30, but only if the Secretary finds that due to unusual circumstances relating to the nature of the project, the nature of the tidelands, the project location or other similar factors, it is necessary for the project to undergo a public benefit review to protect public trust rights in tidelands.

310 CMR 13.03 describes the procedures for projects undergoing mandatory public benefit review. The proponent must include in the environmental notification form or the environmental impact report detailed information describing the nature of the tidelands affected by the project and the public benefit of the project, the purpose and effect of the project, the impact on abutters and the surrounding community, enhancement to the property, benefits to the public trust rights in tidelands or other associated rights, benefits provided through previously obtained municipal permits, community activities on the site, environmental protection and preservation, public health and safety, and the general welfare.

The public has the opportunity during the MEPA public comment period to comment on whether the project provides a public benefit, and the proponent will have the opportunity to submit additional information during the MEPA process. Although public benefit-related information will be collected during MEPA review, the Secretary's public benefit determination will be separate from the MEPA process and will result in a separate written document.

For projects in landlocked tidelands, the Secretary will make a public benefit determination within thirty days after the issuance of the certificate concluding the MEPA process.

For projects requiring a chapter 91 license, the Secretary will typically make a public benefit determination within thirty days after the issuance of a certificate concluding the MEPA process.

Section 13.03 also describes the process for the Secretary, in exceptional cases, to elect to require discretionary public review. If the Secretary requires a discretionary public benefit determination for a project not otherwise required by statute to obtain one, the certificate on the environmental notification form for the project will request specific information from the proponent regarding the project's proposed public benefits in relation to the criteria established by the legislature. When such specific information is submitted, the Secretary will publish a notice of the filing of such information in the environmental monitor and receive comments for thirty days from the publication. For projects in landlocked tidelands, the Secretary will make a public benefit determination within thirty days after the close of public comment. For projects requiring a chapter 91 license, the Secretary will typically make a public benefit determination within thirty days after the close of public comment.

301 CMR13.04 sets forth the standards and criteria for water-dependent and non-water dependent projects. The Secretary will presume that water-dependent projects provide an adequate public benefit. This presumption is consistent with the principle underlying the public Waterfront Act, M.G.L. c. 91, that water-dependent projects serve a proper public purpose.

For non-water dependent projects, the Secretary will base the public benefit determination on the purpose and effect of the project; the impact on abutters and the surrounding community; enhancement to the property; benefits to the public trust rights in tidelands or other associated rights, including but not limited to, benefits provided through previously obtained municipal permits; community activities on the site; environmental protection and preservation; public health and safety, and the general welfare.

In weighing the criteria, the Secretary will focus particular attention on the benefit provided for the public's use and enjoyment of tidelands. The Secretary shall also apply a preference for a benefit provided on-site. If the onsite benefit is inferior or infeasible, the Secretary will apply a preference for a benefit provided in the same general area as the project. If such benefit is inferior or infeasible, the Secretary may accept a voluntary payment to be placed into the Landlocked Tidelands Mitigation Expendable Trust to be used for the purpose of promoting public access to, and use and enjoyment of, the waterfront. A combination of onsite benefit, offsite benefit and mitigation may be used to satisfy the public benefit requirement.

The regulations provide that the Secretary's public benefit determination will not in any way impair the Department's exercise of its powers under chapter 91 and the Department of Environmental Protection will incorporate the public benefit determination into the official record of the chapter 91 license.

### Related Matters

*Intra-agency Coordination.* EEA has a strong preference that the public benefit review be coordinated with local municipal reviews such as the Boston Redevelopment Authority's Article 80 process. EEA seeks public comment on how best to coordinate these processes.

*Expendable Trust projects.* In the event the Expendable Trust is to be utilized, it will work best if projects are identified up front. EEA would appreciate public comment identifying worthy local, regional and state water-dependent projects and suggestions about how to develop a list of such projects.

### *MEPA Regulations.*

Chapter 168 also changes the MEPA process to require that proponents of new projects within landlocked tidelands identify measures to avoid, minimize or mitigate any adverse impact on the public's right to access, use and enjoy tidelands protected by chapter 91. If a project is built in a community where low groundwater levels have been identified as a threat to building foundations, Chapter 168 modifies the MEPA process to require proponents to identify and commit to taking measures to avoid, minimize, or mitigate any adverse impact on

groundwater levels. Proposed amendments to 301 CMR 11.05(4)(b) and 11.07(6)(g)(10) incorporate these new statutory requirements. Information provided pursuant to these new MEPA requirements may also be combined with the information required for the public benefit review.

## 301 CMR 13.00: PUBLIC BENEFIT DETERMINATION REGULATIONS

### Section

13.01: Definitions

13.02: Applicability

13.03: Procedures

13.04: Standards

13.05: Relationship of Public Benefit Determination and Chapter 91 License

### Introduction:

301 CMR 13.00 establishes the procedures and standards to implement the “public benefit determination” requirement under section 18B of G.L. c. 91, which was enacted in November 2007 pursuant to St. 2007, c. 168, section 8. That statute expressly exempts uses and structures in “landlocked tidelands” from the licensing requirements under M.G.L. c. 91, and requires the Secretary of the Executive Office of Energy and Environmental Affairs (the Secretary) to issue a public benefit determination for certain projects in tidelands, including landlocked tidelands.

### 13.01: Definitions

Department means the Department of Environmental Protection (DEP).

Landlocked tidelands is defined in [310 CMR 9.02](#).

MEPA means the Massachusetts Environmental Policy Act, [M.G.L. c. 30, §§ 61 through 62I](#), and 301 CMR 11.00 and as may be amended hereafter.

Secretary means the Secretary of the Executive Office of Energy and Environmental Affairs.

Tidelands is defined in [310 CMR 9.02](#).

Water-Dependent Use is defined in [310 CMR 9.12\(2\)](#).

Water-Dependent Use-Project is defined in [310 CMR 9.12\(1\)](#).

Nonwater-dependent Use is defined in [310 CMR 9.12](#).

Nonwater-dependent Use Project is defined in [310 CMR 9.12\(1\)](#).

For purposes of interpreting these regulations, the definitions of terms contained in 301 CMR 11.00 and 310 CMR 9.00 shall apply.

### 13.02: Applicability

The Secretary shall conduct a public benefit determination for projects that fall within paragraph (1) below. The Secretary may conduct a public benefit determination for projects that do not fall within paragraph (1) in accordance with paragraph (2) below.

- (1) **Mandatory Public Benefit Review.** A public benefit determination shall be required for any project that: (a) files an environmental notification form after November 15, 2007; (b) is required to file an environmental impact report; and (c) is completely or partially located in tidelands or landlocked tidelands.
- (2) **Discretionary Public Benefit Review.** A public benefit determination is presumptively not required for any project that: (a) files an environmental notification form after November 15, 2007; (b) is not required to file an environmental impact report; and, (c) is completely or in part located in tidelands or landlocked tidelands. Notwithstanding this presumption, the Secretary may require a public benefit determination based on a finding by the Secretary that due to unusual circumstances relating to the nature of the project, the nature of the tidelands in question, the project location, or other similar factors, it is necessary for the project to undergo a public benefit review to protect public trust rights in tidelands.

### 13.03: Procedures

- (1) Projects undergoing mandatory public benefit review shall follow these procedures:
  - (a) The proponent shall include in the environmental notification form or the environmental impact report (at the proponent's election) detailed information describing the nature of the tidelands affected by the project and the public benefit of the project, including the purpose and effect of the project, the impact on abutters and the surrounding community, enhancement to the property, benefits to the public trust rights in tidelands or other associated rights, including but not limited to, benefits provided through previously obtained municipal permits, community activities on the site, environmental protection and preservation, public health and safety, and the general welfare. For projects in landlocked tidelands, this information may be combined with the information required under 301 CMR 11.05(4)(b) and 301 CMR 11.07(6)(g)(10).
  - (b) The public shall have the opportunity during the MEPA public comment period(s) to comment on whether the project provides a public benefit, and the proponent shall have the opportunity to submit additional information during the MEPA process.

- (c) For projects in landlocked tidelands, the Secretary shall make a public benefit determination within thirty days after the issuance of the certificate concluding the MEPA process.
- (d) For projects requiring a chapter 91 license, the Secretary shall make a public benefit determination within thirty days after the issuance of a certificate concluding the MEPA process.
- (2) Discretionary public review. Should the Secretary require a public benefit determination for projects pursuant to 310 CMR 13.02(2), the Secretary shall so state in the certificate on the environmental notification form. The certificate shall request specific information from the proponent regarding the project's public benefit. When such specific information is submitted, the Secretary shall publish a notice of the filing of such information in the environmental monitor and receive comments for thirty days from publication. For projects in landlocked tidelands, the Secretary shall make a public benefit determination within thirty days after the close of public comment. For projects requiring a chapter 91 license, the Secretary shall make a public benefit determination within thirty days after the close of public comment.

#### 13.04: Standards

- (1) Water-Dependent Projects. The Secretary shall presume that water-dependent projects meet the criteria listed in 301 CMR 13.04 and provide adequate public benefit.
- (2) Nonwater-Dependent Projects. In making the public benefit determination, the Secretary shall consider the following criteria:
  - (a) the purpose and effect of the project,
  - (b) the impact on abutters and the surrounding community,
  - (c) enhancement to the property,
  - (d) benefits to the public trust rights in tidelands or other associated rights, including but not limited to, benefits provided through previously obtained municipal permits,
  - (e) community activities on the site,
  - (f) environmental protection and preservation,
  - (g) public health and safety, and the general welfare.

- (3) Application of Criteria. In weighing the adequacy of the proposed public benefit, the Secretary shall place particular emphasis on the benefit to the public trust rights in tidelands.

In weighing the benefit to the public trust rights in tidelands, the Secretary shall apply a preference for a benefit provided on-site. If such benefit is inferior or infeasible, the Secretary shall apply a preference for a benefit provided in the same general area as the project. If such benefit is inferior or infeasible, the Secretary may accept a voluntary payment in lieu thereof. Such payment shall be placed into an expendable trust and used for the purpose of promoting public access to, and use and enjoyment of, the waterfront. The proponent may also offer a public benefit consisting of a combination of on-site improvements, off-site improvements, and a payment.

#### 13.05: Relationship of Public Benefit Determination and Chapter 91 License

The Department shall incorporate the public benefit determination of the Secretary in its official record of the chapter 91 license. The Secretary's public benefit determination shall not supersede, eliminate, or in any way impair the Department's exercise of its powers under chapter 91.



## **PROPOSED AMENDMENTS TO THE MASSACHUSETTS ENVIRONMENTAL POLICY ACT (MEPA) REGULATIONS**

The changes in 301 CMR 11.03 clarify the language of the Rare Species threshold to make clear the circumstances requiring the submission of an ENF.

The changes in 301 CMR 11.16 eliminate the requirement to distribute unnecessary copies of documents including the third copy of the EIR to the MEPA Office.

Pursuant to St. 2007, c. 168 (Chapter 168) the changes in 301 CMR 11.05 and 11.07 require that proponents of new projects within landlocked tidelands to identify measures to avoid, minimize or mitigate any adverse impact on the public's right to access, use and enjoy tidelands protected by chapter 91. If a project is built in a community where low groundwater levels have been identified as a threat to building foundations, Chapter 168 modifies the MEPA process to require proponents to identify and commit to taking measures to avoid, minimize, or mitigate any adverse impact on groundwater levels.

Information provided pursuant to these new MEPA requirements may also be combined with the information required for the public benefit review in 301 CMR 13.00.

## **301 CMR 11.00: MEPA REGULATIONS**

### **Section 11.03: Review Thresholds**

The review thresholds identify categories of Projects or aspects thereof of a nature, size or location that are likely, directly or indirectly, to cause Damage to the Environment. Except when the Secretary requires fail-safe review, the review thresholds determine whether MEPA review is required. MEPA review is required when one or more review thresholds are met or exceeded and the subject matter of at least one review threshold is within MEPA jurisdiction. A review threshold that is met or exceeded specifies whether MEPA review shall consist of an ENF and a mandatory EIR or of an ENF and other MEPA review if the Secretary so requires. The subject matter of a review threshold is within MEPA jurisdiction when there is full-scope jurisdiction (i.e., the Project is undertaken by an Agency or involves Financial Assistance) or when the subject matter of the review threshold is conceptually or physically related to the subject matter of one or more required Permits (provided that the review thresholds for Land and Areas of Critical Environmental Concern shall be considered to be related to the subject matter of any required Permit) or the area subject to a Land Transfer. The review thresholds do not apply to: a lawfully existing structure, facility or activity; Routine Maintenance; a Replacement Project; or a Project that is consistent with a Special Review Procedure review document, or other plan or document that has been prepared with the express purpose of assessing the potential environmental impacts from future Projects, has been reviewed as such in accordance with MEPA and 301 CMR 11.00, and has been allowed or approved by any Participating Agency, unless the filing of an ENF and an EIR was required by a decision of the Secretary on any such review document, plan or document. The review thresholds are the following:

#### **(1) Land.**

##### **(a) ENF and Mandatory EIR.**

1. Direct alteration of 50 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices.
2. Creation of ten or more acres of impervious area.

##### **(b) ENF and Other MEPA Review if the Secretary So Requires.**

1. Direct alteration of 25 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices.
2. Creation of five or more acres of impervious area.
3. Conversion of land held for natural resources purposes in accordance with Article 97 of the Amendments to the Constitution of the Commonwealth to any purpose not in accordance with Article 97.
4. Conversion of land in active agricultural use to nonagricultural use,

provided the land includes soils classified as prime, state-important or unique by the United States Department of Agriculture, unless the Project is accessory to active agricultural use or consists solely of one single family dwelling.

5. Release of an interest in land held for conservation, preservation or agricultural or watershed preservation purposes.

6. Approval in accordance with M.G.L. c. 121A of a New urban redevelopment project or a fundamental change in an approved urban redevelopment project, provided that the Project consists of 100 or more dwelling units or 50,000 or more sf of non-residential space.

7. Approval in accordance with M.G.L. c. 121B of a New urban renewal plan or a major modification of an existing urban renewal plan.

**(2) Rare Species.**

~~(a) ENF and Mandatory EIR. None.~~

~~(b) ENF and Other MEPA Review if the Secretary So Requires.~~

~~1. Alteration of designated significant habitat.~~

~~2. Taking of an endangered or threatened species or species of special concern, provided that the Project site is two or more acres and includes an area mapped as a Priority Site of Rare Species Habitats and Exemplary Natural Communities.~~

~~(2) State-listed Species under MA Endangered Species Act~~

~~(a) ENF and Mandatory EIR. None.~~

~~(b) ENF and Other MEPA Review if the Secretary So Requires.~~

~~1. Alteration of designated significant habitat.~~

~~2. Greater than two acres of disturbance of designated priority habitat, as defined in 321 CMR 10.02, that results in a take of a state-listed endangered or threatened species or species of special concern.~~

**(3) Wetlands, Waterways and Tidelands.**

(a) ENF and Mandatory EIR.

1. Provided that a Permit is required:

a. alteration of one or more acres of salt marsh or bordering vegetating wetlands; or

b. alteration of ten or more acres of any other wetlands.

2. Alteration requiring a variance in accordance with the Wetlands Protection Act.

3. Construction of a New dam.

4. Structural alteration of an existing dam that causes an Expansion of 20% or any decrease in impoundment Capacity.

5. Provided that a Chapter 91 License is required, New non-water dependent use or Expansion of an existing non-water dependent structure, provided the use or structure occupies one or more acres of waterways or tidelands.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. Provided that a Permit is required:

- a. alteration of coastal dune, barrier beach or coastal bank;
  - b. alteration of 500 or more linear feet of bank along a fish run or inland bank;
  - c. alteration of 1,000 or more sf of salt marsh or outstanding resource waters;
  - d. alteration of 5,000 or more sf of bordering or isolated vegetated wetlands;
  - e. New fill or structure or Expansion of existing fill or structure, except a pile-supported structure, in a velocity zone or regulatory floodway; or
  - f. alteration of one half or more acres of any other wetlands.
2. Construction of a New roadway or bridge providing access to a barrier beach or a New utility line providing service to a structure on a barrier beach.
  3. Dredging of 10,000 or more cy of material.
  4. Disposal of 10,000 or more cy of dredged material, unless at a designated in-water disposal site.
  5. Provided that a Chapter 91 License is required, New or existing unlicensed non-water dependent use of waterways or tidelands, unless the Project is an overhead utility line, a structure of 1,000 or less sf base area accessory to a single family dwelling, a temporary use in a designated port area, or an existing unlicensed structure in use prior to January 1, 1984.
  6. Construction, reconstruction or Expansion of an existing solid fill structure of 1,000 or more sf base area or of a pile-supported or bottom-anchored structure of 2,000 or more sf base area, except a seasonal, pile-held or bottom-anchored float, provided the structure occupies flowed tidelands or other waterways.

#### **(4) Water.**

##### **(a) ENF and Mandatory EIR.**

1. New withdrawal or Expansion in withdrawal of:
  - a. 2,500,000 or more gpd from a surface water source; or
  - b. 1,500,000 or more gpd from a groundwater source.
2. New interbasin transfer of water of 1,000,000 or more gpd or any amount determined significant by the Water Resources Commission.
3. Construction of one or more New water mains ten or more miles in length.
4. Provided that the Project is undertaken by an Agency, New water service to a municipality or water district across a municipal boundary through New or existing pipelines, unless a disruption of service emergency is declared in accordance with applicable statutes and regulations.

##### **(b) ENF and Other MEPA Review if the Secretary So Requires.**

1. New withdrawal or Expansion in withdrawal of 100,000 or more gpd from a water source that requires New construction for the withdrawal.
2. New withdrawal or Expansion in withdrawal of 500,000 or more gpd

from a water supply system above the lesser of current system-wide authorized withdrawal volume or three-years' average system-wide actual withdrawal volume.

3. Construction of one or more New water mains five or more miles in length.
4. Construction of a New drinking water treatment plant with a Capacity of 1,000,000 or more gpd.
5. Expansion of an existing drinking water treatment plant by the greater of 1,000,000 gpd or 10% of existing Capacity.
6. Alteration requiring a variance in accordance with the Watershed Protection Act, unless the Project consists solely of one single family dwelling.
7. Non-bridged stream crossing 1,000 or less feet upstream of a public surface drinking water supply for purpose of forest harvesting activities.

**(5) Wastewater.**

**(a) ENF and Mandatory EIR.**

1. Construction of a New wastewater treatment and/or disposal facility with a Capacity of 2,500,000 or more gpd.
2. New interbasin transfer of wastewater of 1,000,000 or more gpd or any amount determined significant by the Water Resource Commission.
3. Construction of one or more New sewer mains ten or more miles in length.
4. Provided that the Project is undertaken by an Agency, New sewer service to a municipality or sewer district across a municipal boundary through New or existing pipelines, unless an emergency is declared in accordance with applicable statutes and regulations.
5. New discharge or Expansion in discharge of any amount of sewage, industrial waste water or untreated stormwater directly to an outstanding resource water.
6. New Capacity or Expansion in Capacity for storage, treatment, processing, combustion or disposal of 150 or more wet tpd of sewage sludge, sludge ash, grit, screenings, or other sewage sludge residual materials, unless the Project is an Expansion of an existing facility within an area that has already been sited for the proposed use in accordance with M.G.L. c. 21 or M.G.L. c. 83, section 6.

**(b) ENF and Other MEPA Review if the Secretary So Requires.**

1. Construction of a New wastewater treatment and/or disposal facility with a Capacity of 100,000 or more gpd.
2. Expansion of an existing wastewater treatment and/or disposal facility by the greater of 100,000 gpd or 10% of existing Capacity.
3. Construction of one or more New sewer mains:
  - a. that will result in an Expansion in the flow to a wastewater treatment and/or disposal facility by 10% of existing Capacity;
  - b. five or more miles in length; or

- c. 1/2 or more miles in length, provided the sewer mains are not located in the right of way of existing roadways.
- 4. New discharge or Expansion in discharge:
  - a. to a sewer system of 100,000 or more gpd of sewage, industrial waste water or untreated stormwater;
  - b. to a surface water of:
    - i. 100,000 or more gpd of sewage;
    - ii. 20,000 or more gpd of industrial waste water; or
    - iii. any amount of sewage, industrial waste water or untreated stormwater requiring a variance from applicable water quality regulations; or
  - c. to groundwater of:
    - i. 10,000 or more gpd of sewage within an area, zone or district established, delineated or identified as necessary or appropriate to protect a public drinking water supply, an area established to protect a nitrogen sensitive embayment, an area within 200 feet of a tributary to a public surface drinking water supply, or an area within 400 feet of a public surface drinking water supply;
    - ii. 50,000 or more gpd of sewage within any other area;
    - iii. 20,000 or more gpd of industrial waste water; or
    - iv. any amount of sewage, industrial waste water or untreated stormwater requiring approval by the Department of Environmental Protection of a variance from Title 5 of the State Environmental Code for New construction.
- 5. New Capacity or Expansion in Capacity for:
  - a. combustion or disposal of any amount of sewage sludge, sludge ash, grit, screenings, or other sewage sludge residual materials; or
  - b. storage, treatment, or processing of 50 or more wet tpd of sewage sludge or sewage sludge residual materials.

**(6) Transportation.**

**(a) ENF and Mandatory EIR.**

- 1. Unless the Project consists solely of an internal or on-site roadway or is located entirely on the site of a non-roadway Project:
  - a. construction of a New roadway two or more miles in length; or
  - b. widening of an existing roadway by one or more travel lanes for two or more miles.
- 2. New interchange on a completed limited access highway.
- 3. Construction of a New airport.
- 4. Construction of a New runway or terminal at an existing airport.
- 5. Construction of a New rail or rapid transit line along a New, unused or abandoned right-of-way for transportation of passengers or freight (not including sidings, spurs or other lines not leading to an ultimate destination).
- 6. Generation of 3,000 or more New adt on roadways providing access to a single location.
- 7. Construction of 1,000 or more New parking spaces at a single location.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. Unless the Project consists solely of an internal or on-site roadway or is located entirely on the site of a non-roadway Project:
  - a. construction of a New roadway one-quarter or more miles in length; or
  - b. widening of an existing roadway by four or more feet for one-half or more miles.
2. Construction, widening or maintenance of a roadway or its right-of-way that will:
  - a. alter the bank or terrain located ten more feet from the existing roadway for one-half or more miles, unless necessary to install a structure or equipment;
  - b. cut five or more living public shade trees of 14 or more inches in diameter at breast height; or
  - c. eliminate 300 or more feet of stone wall.
3. Expansion of an existing runway at an airport.
4. Construction of a New taxiway at an airport.
5. Expansion of an existing taxiway at Logan Airport.
6. Expansion of an existing terminal at Logan Airport by 100,000 or more sf.
7. Expansion of an existing terminal at any other airport by 25,000 or more sf.
8. Construction of New or Expansion of existing air cargo buildings at an airport by 100,000 or more sf.
9. Conversion of a military airport to a non-military airport.
10. Construction of a New rail or rapid transit line for transportation of passengers or freight.
11. Discontinuation of passenger or freight service along a rail or rapid transit line.
12. Abandonment of a substantially intact rail or rapid transit right-of-way.
13. Generation of 2,000 or more New adt on roadways providing access to a single location.
14. Generation of 1,000 or more New adt on roadways providing access to a single location and construction of 150 or more New parking spaces at a single location.
15. Construction of 300 or more New parking spaces at a single location.

**(7) Energy.**

**(a) ENF and Mandatory EIR.**

1. Construction of a New electric generating facility with a Capacity of 100 or more MW.
2. Expansion of an existing electric generating facility by 100 or more MW.
3. Construction of a New fuel pipeline ten or more miles in length.
4. Construction of electric transmission lines with a Capacity of 230 or more kv, provided the transmission lines are five or more miles in length along New, unused or abandoned right of way.

**(b) ENF and Other MEPA Review if the Secretary So Requires.**

1. Construction of a New electric generating facility with a Capacity of 25 or more MW.

2. Expansion of an existing electric generating facility by 25 or more MW.
3. Construction of a New fuel pipeline five or more miles in length.
4. Construction of electric transmission lines with a Capacity of 69 or more kv, provided the transmission lines are one or more miles in length along New, unused or abandoned right of way.

**(8) Air.**

(a) ENF and Mandatory EIR. Construction of a New major stationary source with federal potential emissions, after construction and the imposition of required controls, of: 250 tpy of any criteria air pollutant; 40 tpy of any HAP; or 100 tpy of any combination of HAPs.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. Construction of a New major stationary source with federal potential emissions, after construction and the imposition of required controls, of: 100 tpy of PM as PM10, CO, lead or SO<sub>2</sub>; 50 tpy of VOC or NO<sub>x</sub>; 10 tpy of any HAP; or 25 tpy of any combination of HAPs.
2. Modification of an existing major stationary source resulting in a "significant net increase" in actual emissions, provided that the stationary source or facility is major for the pollutant, emission of which is increased by: 15 tpy of PM as PM10; 100 tpy of CO; 40 tpy of SO<sub>2</sub>; 25 tpy of VOC or NO<sub>x</sub>; 0.6 tpy of lead.

**(9) >Solid and Hazardous Waste>.**

(a) ENF and Mandatory EIR. New Capacity or Expansion in Capacity of 150 or more tpd for storage, treatment, processing, combustion or disposal of solid waste, unless the Project is a transfer station, is an Expansion of an existing facility within a validly site assigned area for the proposed use, or is exempt from site assignment requirements.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. New Capacity or Expansion in Capacity for combustion or disposal of any quantity of solid waste, or storage, treatment or processing of 50 or more tpd of solid waste, unless the Project is exempt from site assignment requirements.
2. Provided that a Permit is required in accordance with M.G.L. c. 21D, New Capacity or Expansion in Capacity for the storage, recycling, treatment or disposal of hazardous waste.

**(10) Historical and Archaeological Resources.**

(a) ENF and Mandatory EIR. None.

(b) ENF and Other MEPA Review if the Secretary So Requires. Unless the Project is subject to a Determination of No Adverse Effect by the Massachusetts Historical Commission or is consistent with a Memorandum of Agreement with the Massachusetts Historical Commission that has been the subject of public notice and comment:

1. demolition of all or any exterior part of any Historic Structure listed in or located in any Historic District listed in the State Register of Historic



Places or the Inventory of Historic and Archaeological Assets of the Commonwealth; or

2. destruction of all or any part of any Archaeological Site listed in the State Register of Historic Places or the Inventory of Historic and Archaeological Assets of the Commonwealth.

**(11) Areas of Critical Environmental Concern.**

(a) ENF and Mandatory EIR. None.

(b) ENF and Other MEPA Review if the Secretary So Requires. Any Project within a designated ACEC, unless the Project consists solely of one single family dwelling.

**(12) Regulations.**

(a) ENF and Mandatory EIR. None.

(b) ENF and Other MEPA Review if the Secretary So Requires.

Promulgation of New or revised regulations, of which a primary purpose is protecting against Damage to the Environment, that significantly reduce:

1. standards for environmental protection;
2. opportunities for public participation in permitting or other review processes; or
3. public access to information generated or provided in accordance with the regulations.

## **301 CMR 11.00: MEPA REGULATIONS**

### **Section 11.05: ENF Preparation and Filing**

(1) **Filing and Circulation Requirements.** If a Project requires MEPA review in accordance with 301 CMR 11.01(2), the Proponent shall complete an ENF and file it with the Secretary. Prior to or when filing the ENF with the Secretary, the Proponent shall circulate copies of the ENF in accordance with 301 CMR 11.16(2) and publish a Public Notice of Environmental Review in accordance with 301 CMR 11.15(1). The Proponent's failure to circulate the ENF or publish the Public Notice properly shall allow the Secretary to require an extension or repetition of the ENF review. The Secretary may reject an incomplete ENF, in which case the Secretary shall notify the Proponent, who shall file and circulate a new ENF and publish a new Public Notice.

(2) **Timely Filing.** In all cases, the Proponent shall file the ENF sufficiently prior to Commencement of the Project and any required Agency Action to allow timely compliance with MEPA and 301 CMR 11.00 including analysis of alternatives, consideration of cumulative environmental impacts, and providing meaningful opportunities for public review. In the case of a Project undertaken by an Agency, the Proponent shall ordinarily file the ENF not less than one year prior to the expected Commencement of the Project, and in any event prior to the Agency's finalizing the design or making an irreversible commitment of financial resources to the Project. In the case of a Project that is undertaken by a Person and requires one or more Permits or involves Financial Assistance but does not involve a Land Transfer, the Proponent shall file the ENF at any time prior to but no later than ten Days after filing the first application for a Permit or Financial Assistance. In the case of a Project that is undertaken by a Person and involves a Land Transfer, the Proponent shall file the ENF prior to closing the Land Transfer unless the Land Transfer is not final Agency Action in accordance with 301 CMR 11.02(2). The Proponent may consult with the Secretary for specific advice as to when to file the ENF.

(3) **Consultation.** Prior to filing the ENF, the Proponent may consult with the Secretary and any Participating Agency to determine any review thresholds the Project may meet or exceed and any Agency Action it may require, and to avoid unnecessary MEPA review if the Project may not be eligible for the required Agency Action.

(4) (a) **Description of the Project and Potential Impacts.** The ENF shall include a concise but accurate description of the Project and its alternatives, identify any review thresholds the Project may meet or exceed and any Agency Action it may require, present the Proponent's initial assessment of potential environmental impacts, propose mitigation measures, and may include a proposed Scope. The ENF shall indicate whether the Proponent is requesting that the Secretary allow a single EIR in accordance with 301 CMR 11.06(8), establish a Special Review

Procedure in accordance with 301 CMR 11.09, or grant a waiver in accordance with 301 CMR 11.11. The Proponent shall not limit description of the Project or assessment of its potential environmental impacts on account of any jurisdictional or other limitation that may apply to the Scope, if an EIR is required. The ENF shall separately assess potential environmental impacts and proposed mitigation. The ENF shall identify the sources on which the assessments are based.

(4)(b) If the project is located in landlocked tidelands as defined in 310 CMR 9.02, the ENF shall include an explanation of the project's impact on the public's right to access, use, and enjoy tidelands that are protected by chapter 91 and shall identify measures to avoid, minimize, or mitigate any adverse impact on such rights. If the project is located in landlocked tidelands and an area where low groundwater levels have been identified by a municipality or by a state or federal agency as a threat to building foundations, the ENF shall also include an explanation of the project's impact on groundwater levels and identify and commit to taking measures to avoid, minimize, or mitigate any adverse impact on groundwater levels. The ENF shall also describe the project's compliance with any municipal regulations designed to protect groundwater levels. The proponent may combine the information provided under this paragraph with the information provided under 301 CMR 13.03.

(4)(c) The information provided in the ENF shall be designed to facilitate consultation and elicit comments identifying any relevant and significant issues. The Proponent's submission of a proposed Scope with the ENF shall not mean that the Proponent believes an EIR is required or that the Secretary will require an EIR. The Proponent's assessment of potential environmental impacts or proposed Scope shall not limit the Secretary's discretion in determining the Scope.

**(5) The ENF.** The Secretary shall prescribe the form and content of the ENF, which shall be available from the MEPA Office. The Proponent shall complete the ENF in accordance with 301 CMR 11.00 and any instructions provided on or with the ENF, and shall use an original or full-sized photocopy or other version of the ENF expressly approved by the Secretary. The Secretary may from time to time modify the ENF or instructions, provided that the Secretary shall first publish the modified form or instructions in the Environmental Monitor and shall at the same time specify the effective date of the modified ENF or instructions.

**(6) Required ENF Attachments.** The Proponent shall attach to the ENF an original United States Geologic Survey Map or other location map expressly approved by the Secretary that includes and indicates the Project site, a site plan at an appropriate scale and level of detail, and a list of all Agencies and Persons to whom the Proponent circulated the ENF in accordance with 301 CMR 11.16(2).

**(7) Expanded ENF.** In addition to filing a completed ENF and the required attachments, the Proponent may file more extensive and detailed information describing and analyzing the Project and its alternatives, and assessing its

potential environmental impacts and mitigation measures. The Proponent may provide this additional information whenever it is available. The Proponent shall provide this additional information when the Proponent is requesting that the Secretary allow a single EIR in accordance with 301 CMR 11.06(8), establish a Special Review Procedure in accordance with 301 CMR 11.09, or grant a waiver in accordance with 301 CMR 11.11. The Proponent may refer to 301 CMR 11.07(6) for guidance and may consult with the Secretary for specific advice as to the form and content of this additional information. The Secretary shall duly consider this additional information in the ENF, although it shall not limit the Secretary's discretion to determine the Scope. A Proponent who files an expanded ENF requesting a single EIR or Special Review Procedure shall be deemed to consent to an extension of the ENF review period in accordance with 301 CMR 11.06(1) and of the ENF public comment period in accordance with 301 CMR 11.06(3).

**(8) Voluntarily Filed ENF.** The Proponent may voluntarily file an ENF and, with the Secretary's consent, undergo MEPA review for a Project that does not meet or exceed any review thresholds. Once the Secretary publishes the ENF in the Environmental Monitor in accordance with 301 CMR 11.15(2), the Proponent may withdraw the ENF only with the Secretary's consent.

**(9) Enforcement Actions.** If an Agency's ability to undertake an action enforcing its statutory or regulatory obligations is impeded by the failure of a Proponent to file an ENF, the Agency may, with the consent of the Secretary and after 30 Days prior written notice to the Proponent, file an ENF on behalf of the Proponent.

## **Section 11.07: EIR Preparation and Filing**

(1) **Filing and Circulation Requirements.** If the Secretary requires an EIR in accordance with 301 CMR 11.06(7), the Proponent shall prepare the EIR and file it with the Secretary. Prior to or when filing the EIR with the Secretary, the Proponent shall circulate copies of the EIR in accordance with 301 CMR 11.16(3) and the Scope. The Proponent's failure to circulate the EIR properly shall allow the Secretary to require an extension or repetition of the EIR review.

(2) **Timely Filing.** The Proponent shall file the EIR as soon after the Secretary issues the Scope as is reasonably possible given the status of Project planning and design, the type and size of the Project, and the Scope. The Proponent may consult with the Secretary for specific advice as to when to file the EIR.

(3) **Draft EIR.** If the Secretary requires an EIR in accordance with 301 CMR 11.06(7), the Proponent shall first prepare a draft EIR, unless otherwise indicated in the Scope. The draft EIR shall present in accordance with 301 CMR 11.07(6) and the Scope a reasonably complete and stand-alone description and analysis of the Project and its alternatives, and an assessment of its potential environmental impacts and mitigation measures. The Proponent shall ordinarily use the review and comments by any Person or Agency on the draft EIR as an additional opportunity to improve the planning and design of the Project.

(4) **Final EIR** If the Secretary determines that the draft EIR is adequate in accordance with 301 CMR 11.08(8)(b), the Proponent shall prepare a final EIR, unless otherwise indicated in the Scope. The Secretary may limit the Scope of the final EIR to aspects of the Project or issues that require further description or analysis and a response to comments, instead of requiring a stand-alone document that meets all of the form and content requirements for an EIR in accordance with 301 CMR 11.07(6), provided that the draft and final EIRs shall present a complete and definitive description and analysis of the Project and its alternatives, and assessment of its potential environmental impacts and mitigation measures sufficient to allow a Participating Agency to fulfill its obligations in accordance with M.G.L. c. 30, section 61 and 301 CMR 11.12(5).

(5) **Single EIR.** If the Secretary allows a single EIR in accordance with 301 CMR 11.06(8), the Proponent shall prepare a single EIR. The single EIR shall build on the information in the expanded ENF and shall present in accordance with 301 CMR 11.07(6) and the Scope a complete, stand-alone and definitive description and analysis of the Project and its alternatives, and assessment of its potential environmental impacts and mitigation measures sufficient to allow a Participating Agency to fulfill its obligations in accordance with M.G.L. c. 30, section 61 and 301 CMR 11.12(5).

(6) **Form and Content of EIR.** Unless the Secretary has indicated otherwise in the Scope or as part of a Special Review Procedure, the depth and level of

description and analysis in the EIR shall reflect the status of Project planning and design, the type and size of the Project, the requirements of any Agency Action, the availability of reasonable alternatives and methods to avoid or minimize potential environmental impacts, and the opportunity to assess environmental impacts and to identify appropriate mitigation measures. The EIR shall ordinarily contain the following sections (unless the Secretary indicates in the Scope or as a part of a Special Review Procedure that specific issues shall be described or analyzed in additional sections in the EIR or that any of these sections shall not be included in the EIR):

(a) Title Page. The name and location of the Project, the EOEI File Number, the type of EIR, the name of the Proponent, the name of the preparer, and the date of filing;

(b) Table of Contents. The title and page number of all sections, maps, plans, tables, figures, and appendices of the EIR;

(c) Secretary's Certificates. A copy of each Secretary's certificate for the Project, including on the ENF, a draft EIR, or a Notice of Project Change, and any other determination or document issued by the Secretary for the Project.

(d) Summary. A brief description in clear, nontechnical language including:

1. the name and location of the Project, and the EOEI File Number;
2. a brief Project description listing in particular any changes made to the Project since the review of the previous review document;
3. a list of any Permit, Financial Assistance, or Land Transfer, and any required Federal environmental, or land-use permit, license, certificate, variance, or approval with a summary of the current status of each application;
4. a summary of alternatives to the Project;
5. a summary of potential environmental impacts of the Project; and
6. a list of mitigation measures for the Project.

(e) Project Description. A detailed description and analysis of the nature and location of the Project including:

1. the type, size, and proposed use of the Project;
2. the objectives and anticipated benefits of the Project;
3. a description of the physical characteristics of the Project and its surroundings, illustrated with a location map and site plan at an appropriate scale and level of detail; and
4. a timetable, approximate cost, and the methods and timing of construction of the Project.

(f) Alternatives to the Project. A description and analysis of alternatives to the Project including:

1. all feasible alternatives, including but not limited to those indicated in the Scope;
2. the alternative of not undertaking the Project (i.e., the no-build alternative) for the purpose of establishing a future baseline in relation to which the Project and its alternatives can be described and analyzed and its potential environmental impacts and mitigation measures can be assessed;
3. an analysis of the feasible alternatives in light of the objectives of the Proponent and the mission of any Participating Agency, including relevant

statutes, regulations, executive orders and other policy directives, and any applicable Federal, municipal, or regional plan formally adopted by an Agency or any Federal, municipal, or regional governmental entity;

4. an analysis of the principal differences among the feasible alternatives under consideration, particularly regarding potential environmental impacts;
5. a brief discussion of any alternatives no longer under consideration including the reasons for no longer considering these alternatives.

(g) Existing Environment. A description and analysis of the physical, biological, chemical, economic, and social conditions of the Project site, its immediate surroundings, and the region (in sufficient detail to provide a baseline in relation to which the Project and its alternatives can be described and analyzed and its potential environmental impacts and mitigation measures can be assessed) including:

1. topography, geology, and soils;
2. surface and groundwater hydrology and quality;
3. air quality and noise;
4. plant and animal species and habitat;
5. traffic, transit, and pedestrian and bicycle transportation;
6. scenic qualities, open space and recreational resources;
7. Historic Structures or Districts, and Archaeological Sites;
8. the built environment and human use of the Project site, its immediate surroundings and the region, including existing infrastructure (i.e., water supply, wastewater treatment and/or disposal, transportation, waste management, etc.), zoning districts and other relevant land-use designations or plans (i.e., local or regional capital improvement plans or infrastructure investments, economic development, growth planning and open space plans, etc.), business districts, industrial parks, housing stock, and vacancy rates; and
9. rare or unique features (including environmental and social conditions) of the Project site and its immediate surroundings such that any increase in environmental impacts, however small or gradual, may result in an unusual or disproportionate effect on environmental resources or quality or public health.

10. if the project is located in landlocked tidelands as defined in 310 CMR 9.02, an explanation of the project's impact on the public's right to access, use, and enjoy tidelands that are protected by chapter 91 and measures to avoid, minimize, or mitigate any adverse impact on such rights. If the project is located in landlocked tidelands and an area where low groundwater levels have been identified by a municipality or by a state or federal agency as a threat to building foundations, an explanation of the project's impact on groundwater levels and identification and commitment to taking measures to avoid, minimize, or mitigate any adverse impact on groundwater levels. The proponent may combine the information provided under this paragraph with the information provided under 301 CMR 13.03.

(h) Assessment of Impacts. A detailed description and assessment of the negative and positive potential environmental impacts of the Project and its alternatives. The EIR shall assess (in quantitative terms, to the maximum extent practicable)

the direct and indirect potential environmental impacts from all aspects of the Project that are within the Scope. The assessment shall include both short-term and long-term impacts for all phases of the Project (e.g., acquisition, development, and operation) and cumulative impacts of the Project, any other Projects, and other work or activity in the immediate surroundings and region.

(i) Statutory and Regulatory Standards and Requirements. A list of any Permit, Financial Assistance, or Land Transfer that is or may be required, and a brief description and analysis of the applicable statutory and regulatory standards and requirements thereof and the measures to be taken to ensure due compliance therewith.

(j) Mitigation Measures. A description and assessment of physical, biological and chemical measures and management techniques designed to limit negative environmental impacts or to cause positive environmental impacts during development and operation of a Project. The EIR shall specify in detail: the measures to be taken by the Proponent or any other Agency or Person to avoid, minimize, and mitigate potential environmental impacts; an Agency or Person responsible for funding and implementing mitigation measures, if not the Proponent; and the anticipated implementation schedule that shall ensure that mitigation measures shall be implemented prior to or when appropriate in relation to environmental impacts. The EIR shall also discuss alternatives to the proposed mitigation measures considered by the Proponent or suggested in comments by any Agency or Person, noting the relative benefits and costs of these alternative mitigation measures.

(k) Proposed Section 61 Findings. Proposed findings in accordance with M.G.L. c. 30, section 61 for each Agency for each Agency Action to be taken on the Project. These Proposed Section 61 Findings shall specify in detail: all feasible measures to be taken by the Proponent or any other Agency or Person to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable; an Agency or Person responsible for funding and implementing mitigation measures, if not the Proponent; and the anticipated implementation schedule that will ensure that mitigation measures shall be implemented prior to or when appropriate in relation to environmental impacts.

(l) Response to Comments. A response to the certificate of the Secretary on the previous review document and each comment received on the previous review document, provided that the subject matter of the comment is within the Scope. Unless the Secretary has indicated otherwise in the certificate on the previous review document, the EIR shall contain a copy of each comment either in this section or in a separate appendix, provided that this section clearly explains the location of each comment and the response to each comment.

(m) Appendices. A presentation of detailed technical data (e.g., traffic analyses, hydrologic calculations, modeling data), to the extent necessary to keep the main text of the EIR clear and readable. The main text of the EIR shall refer to and summarize any information contained in any appendix. Unless the Secretary has indicated otherwise in the Scope or as a part of a Special Review Procedure, the



Proponent shall circulate appendices with the main text of the EIR in accordance with 301 CMR 11.16(3).

The Proponent may vary the outline of ordinary EIR sections (e.g., by combining 301 CMR 11.07(6)(g) through (l) to address one aspect of the Project or issue at a time), provided that the EIR addresses the substance of each section. The EIR shall ordinarily be printed on both sides of each page, be paginated, clearly reference maps, plans, tables and figures, and contain an index and a circulation list.

## 301 CMR 11.00: MEPA REGULATIONS

### Section 11.16: Filing and Circulation

**(1) Filing with the Secretary.** All written communications and review documents required or permitted to be filed with the Secretary in accordance with MEPA and 301 CMR 11.00 shall be addressed as follows:

Secretary of Environmental Affairs

Attention: MEPA Office

[Analyst Name], EOE No. \_\_\_\_\_

100 Cambridge Street - 9th floor

Boston, Massachusetts 02114

**(2) Circulation of ENF.** The Proponent shall circulate the ENF as follows:

(a) To the MEPA Office. Two copies to the Secretary, Attention: MEPA Office.

(b) To Agency and Other Reviewers. One copy to each of the following (or their successors or assigns):

~~1. Executive Office of Environmental Affairs – the appropriate policy director;~~

~~21.~~ Department of Environmental Protection (DEP) - Boston office (attention: MEPA Coordinator); the appropriate regional office (attention: MEPA Coordinator); each program from which a Permit will be sought;

~~23. Executive Office of Transportation and Construction (EOTC);~~

4. Massachusetts Highway Department - Public/Private Development Unit; and the appropriate district office;

~~35. Massachusetts Aeronautics Commission;~~

6. Massachusetts Historical Commission;

~~47.~~ The appropriate regional planning agency (RPA);

~~85.~~ In each municipality affected by the Project - the city council/board of selectmen; the planning board/department; the conservation commission; and the department/board of health;

~~69.~~ Massachusetts Coastal Zone Management (MCZM) office and the Division of Marine Fisheries, if the Project is in a Coastal Zone community;

~~107.~~ Department of ~~Food and Agriculture~~Agricultural Resources, if the Project site has been in agricultural use within the last 15 years;

~~148.~~ Natural Heritage and Endangered Species Program, if the Project site is within or contains designated significant or estimated habitat, or priority sites of endangered or threatened species or species of special concern in accordance with the Massachusetts Endangered Species Act;

~~942.~~ Department of Conservation and Recreation Metropolitan-District Commission (MDC)(DCR), if the Project affects DCRMDC roadways, watersheds or other properties;

~~1043.~~ Department of Public Health (DPH), if the Project implicates public health impacts;

~~1144. Department of Telecommunications and Energy Division of Energy Resources if the project is subject to the Greenhouse Gas Emissions Policy,~~ and the Energy Facilities Siting Board (EFSB), if the Project is subject to review by EFSB;

~~1245.~~ Massachusetts Water Resources Authority (MWRA), if the Project is in a municipality served by the MWRA;

~~4613.~~ Massachusetts Bay Transportation Authority (MBTA), if the Project ~~affects MBTA facilities or properties in a municipality served by the MBTA;~~ and

~~4714.~~ Any other Agency from which an Agency Action may be required for the Project.

(c) Requested Copies. The Proponent shall promptly send a copy of the ENF, free of charge, to any Agency or Person requesting it during the review period for the ENF. The Proponent shall maintain a list of each Person or Agency requesting a copy, the date of each request, and the date each copy was sent out. The Secretary may extend the review period for the ENF as a result of undue delay by the Proponent in providing copies.

**(3) Circulation of EIR.** The Proponent shall circulate the EIR as follows:

(a) To the MEPA Office. ~~Three~~ Two copies to the Secretary, Attention: MEPA Office;

(b) To Previous Commenters and Others. One copy, free of charge, to each Person or Agency who previously commented on the ENF and to any other Agency or Person identified by the Secretary in the Scope or thereafter.

(c) Requested Copies. The Proponent shall promptly send a copy of the EIR to any Agency or Person requesting it during the public comment period, free of charge, except that the Proponent may, with the consent of the Secretary, charge the cost of reproduction for these additional copies. The Proponent shall maintain a list of each Agency or Person requesting a copy, the date of each request, and the date each copy was sent out. The Secretary may extend the public comment period for the EIR as a result of undue delay by the Proponent in providing copies.

**(4) List of Addresses.** The MEPA Office shall maintain a list of current addresses for each Agency, as well as lists of municipalities by coastal zone, watershed, and DEP, MHD, RPA, MWRA, and MBTA region or district, and shall make the information available to a Proponent upon request.